



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2014-0683, FRL-9928-39-Region 2]

Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revision submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 2008 National Ambient Air Quality Standard (NAAQS) for lead (Pb). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: This rule is effective on [Insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2014-0683. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. What is the Background Information?
- II. What comments did EPA receive in response to its proposal?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the Background Information?

On November 12, 2008, EPA promulgated a new, rolling 3 month average NAAQS for Pb, herein referred to as the 2008 Pb NAAQS. See 73 FR 66964.¹ The 2008 Pb NAAQS is 0.15 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) maximum (not-to-be-exceeded). In the same action EPA revised the secondary Pb NAAQS to be identical in all respects to the revised primary standard, i.e., $0.15 \mu\text{g}/\text{m}^3$.

Section 110(a)(1) provides the procedural and timing requirements for State Implementation Plans (SIPs). Section 110(a)(2) lists specific elements that states must meet for SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs. Based on the October 15, 2008 date of signature for the 2008 Pb NAAQS, infrastructure SIPs for the 2008 Pb NAAQS were due on October 15, 2011.

EPA is acting on New York's SIP submittal dated October 13, 2011, as supplemented on February 24, 2012, which addresses the section 110 infrastructure requirements for the 2008 Pb NAAQS. Two elements identified in section 110(a)(2) are not governed by the three year

¹ Final rule signed October 15, 2008. The 1978 lead standard ($1.5 \mu\text{g}/\text{m}^3$ as a quarterly average) remains in effect until one year after an area is designated for the 2008 standard, except that in areas designated nonattainment for the 1978 lead standard, the 1978 standard remains in effect until implementation plans to attain or maintain the 2008 standard are approved.

submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to CAA section 191. (See also CAA section 172 for general nonattainment plan requirements). These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA.

As a result, this action does not address the nonattainment area plan requirements related to section 110(a)(2)(C) or 110(a)(2)(I).

II. What comments did EPA receive in response to its proposal?

On December 15, 2014 (79 FR 74046), EPA proposed to approve New York's SIP submittal addressing the section 110 infrastructure requirements for the 2008 Pb NAAQS. EPA received one adverse comment on the December 15, 2014 proposal. A synopsis of the adverse comment, as well as EPA's response is discussed below.

Comment: EPA must disapprove element C with regard to Prevention of Significant Deterioration (PSD) unless New York has the PM_{2.5} increments approved into its PSD SIP. As you may know, EPA's position is the issue of PM_{2.5} increments is relevant even if this is a lead infrastructure SIP.

Response:

Element C requires that each infrastructure SIP contain a permitting program “as required by part C.” CAA title I part C is applicable to all pollutants subject to regulation under the CAA. See, e.g., CAA section 165(a)(4). After further review EPA agrees that Element C is not restricted to only those provisions of CAA title I part C that pertain to the particular new or revised NAAQS addressed by the particular infrastructure SIP action. Because the scope of CAA title I part C is comprehensive (covering all pollutants subject to regulation under the CAA, including GHG), the EPA likewise reads the unrestricted reference to CAA title I part C in Element C to mean that this provision has the same scope as CAA title I part C itself. Thus, a fully approved comprehensive PSD program addressing all regulated pollutants is needed in order to approve the infrastructure SIP for any one pollutant.

NYSDEC has adopted and submitted to EPA for approval into its SIP, a PSD program that includes PM_{2.5} increments. However, the PM_{2.5} increments have not yet been approved by EPA. EPA will defer taking final action approving New York's infrastructure SIP submission with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II) prong 3, and (J) until EPA has approved, or simultaneously approves New York's adopted PSD program.

III. What action is EPA taking?

EPA is approving New York's submittal as fully meeting the infrastructure requirements for the 2008 primary Pb NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (D)(i)(I) prongs 1 and 2, D(i)(II) prong 4, (E), (F), (G), (H), (K), (L), and (M).

EPA is not finalizing action on 110(a)(2) elements and sub-elements, as follows: (C), (D)(i)(II) prong 3, and (J). EPA is not acting on New York's submittal as it relates to nonattainment

provisions, the NSR program required by part D in section 110(a)(2)(C) and the measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because the State's infrastructure SIP submittal does not include nonattainment requirements and EPA will act on them when, if necessary, they are submitted.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to

each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER OFFICE: insert date 60 days after date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 8, 2015.

Judith A. Enck,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart HH - New York

2. In §52.1670(e), the table titled “EPA-Approved New York Nonregulatory and Quasi-Regulatory Provisions” is amended by adding the entry “Section 110(a)(2) Infrastructure Requirements for the 2008 Primary Pb NAAQS” at the end of table, to read as follows:

§52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| Action/SIP element | Applicable geographic or nonattainment area | New York submittal date | EPA approval date | Explanation |
|--|--|--|---|---|
| * * * * * | | | | |
| Section 110(a)(2) Infrastructure Requirements for the 2008 Primary Pb NAAQS. | Statewide | 10/13/11, and supplemented on 2/24/12. | [Insert date of publication in the Federal Register], [Insert FR citation] | This action addresses the following CAA elements: 110(a)(2)(A), (B), (D)(i)(I) prongs 1 and 2, D(i)(II) prong 4, (E), (F), (G), (H), (K), (L), and (M). |

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